

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

BRIAN L. FRECHETTE,

Plaintiff,

v.

AMERIQUEST MORTGAGE COMPANY
and DEUTSCHE BANK NATIONAL
TRUST COMPANY, as TRUSTEE of
AMERIQUEST MORTGAGE
SECURITIES, INC. ASSET BACKED
PASS-THROUGH CERTIFICATES,
SERIES 2003-11 UNDER THE POOLING
AND SERVICING AGREEMENT DATED
AS OF NOVEMBER 1, 2003, WITHOUT
RECOURSE

Defendants.

CIVIL ACTION NO. 05-11398-RWZ

AMERIQUEST MORTGAGE COMPANY'S ANSWER TO COMPLAINT

Defendant Amerquest Mortgage Company, Inc. ("Amerquest") hereby answers the Complaint of plaintiff Brian L. Frechette as follows:

I. Introductory Statement

1. As to the first sentence of paragraph 1 of the Complaint, Amerquest admits that Plaintiff is the obligor and mortgagor under a certain note and mortgage on property located at 74 Washington Street, Sherborn, Massachusetts, respectively dated on or about October 1, 2003. As to the remaining allegations set forth in the first sentence of paragraph 1 and in the second sentence of paragraph 1 of the Complaint, the allegations therein consist of legal conclusions to which no responsive pleading is required. To the extent a further response is required, Amerquest denies the allegations. As to the third sentence of paragraph 1 of the Complaint, Amerquest denies that it has in any way acted wrongfully. As to the remaining allegations set

forth in the third sentence of paragraph 1 of the Complaint, the allegations therein consist of legal conclusions to which no responsive pleading is required. To the extent a further response is required, Ameritrust denies the allegations. As to the fourth sentence of paragraph 1 of the Complaint, Ameritrust denies the allegations. As to the fifth sentence of paragraph 1 of the Complaint, the allegations therein consist of legal conclusions to which no responsive pleading is required. To the extent a further response is required, Ameritrust notes that on July 5, 2005, plaintiff filed a Stipulation and Consent Order with the Middlesex Superior Court, by which the parties stipulated to the cancellation of the foreclosure proceedings pending resolution of the allegations set forth in the Complaint.

II. Parties

2. On information and belief, Ameritrust admits the allegations set forth in paragraph 2 of the Complaint.

3. Ameritrust admits the allegations set forth in the first sentence of paragraph 3 of the Complaint. As to the second sentence of paragraph 3 of the Complaint, Ameritrust admits that it has transacted business in Massachusetts, and denies the remaining allegations.

4. As to the second sentence of paragraph 4 of the Complaint, Ameritrust admits that Deutsche Bank National Trust Company is trustee of Ameritrust Mortgage Securities, Inc. asset backed pass-through certificates, Series 2003-11 under the Pooling and Servicing Agreement dated as of November 1, 2003, without recourse ("Deutsche Bank, as trustee") and that it is the present holder of the subject note secured by the subject mortgage. Ameritrust denies the allegations set forth in the third sentence of paragraph 4 of the Complaint. Ameritrust is without knowledge or information sufficient to form a belief as to the remaining allegations set forth in paragraph 4 of the Complaint.

III. Jurisdiction and Venue

5. The allegations set forth in paragraph 5 of the Complaint consist of legal conclusions to which no responsive pleading is required. To the extent a further response is required, Ameritrust notes that on July 1, 2005, Ameritrust removed this action from the Middlesex Superior Court for the Commonwealth of Massachusetts to the United States District Court for the District of Massachusetts. Ameritrust admits that the Court has subject matter jurisdiction over this matter.

6. The allegations set forth in paragraph 6 of the Complaint consist of legal conclusions to which no responsive pleading is required. To the extent a further response is required, Ameritrust notes that on July 1, 2005, Ameritrust removed this action from the Middlesex Superior Court for the Commonwealth of Massachusetts to the United States District Court for the District of Massachusetts. Ameritrust admits that venue is proper in this district.

IV. Facts

7. Ameritrust is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7 of the Complaint.

8. Ameritrust is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 8 of the Complaint. To the extent a further response is required, Ameritrust denies the allegations.

9. Ameritrust admits that it funded plaintiff's loan and is without knowledge or information regarding the remaining allegations set forth in paragraph 9 of the Complaint.

10. Ameritrust admits that loan documents were executed on or about October 1, 2003. To the extent that plaintiff alleges that "Ameritrust's closing attorney" participated in the closing in question, Ameritrust denies that such attorney was an Ameritrust employee.

Amerquest is without knowledge or information regarding the remaining allegations set forth in paragraph 10 of the Complaint.

11. Amerquest admits that on or about October 1, 2003, plaintiff executed an adjustable rate note in the amount of \$543,750.00 and that the terms of the adjustable rate note speak for themselves. Amerquest admits that a true copy of the adjustable rate note is attached as Exhibit 1 to plaintiff's Complaint.

12. Amerquest admits the allegations set forth in paragraph 12 of the Complaint.

13. Amerquest admits that on or about October 1, 2003, plaintiff signed a HUD-1 Settlement Statement, which HUD-1 Settlement Statement speaks for itself as to its terms. Amerquest admits that a true copy of the HUD-1 Settlement Statement is attached as Exhibit 3 to plaintiff's Complaint.

14. Amerquest admits the allegations set forth in paragraph 14 of the Complaint and admits that a true copy of the Truth-In-Lending Disclosure Statement is attached as Exhibit 4 to plaintiff's Complaint.

15. Amerquest admits that plaintiff paid and agreed to certain fees and costs in connection with his loan transaction and that the description of those fees and costs are set forth on the HUD-1 Settlement Statement provided to plaintiff at closing. The HUD-1 Settlement Statement speaks for itself.

16. As to the first sentence of paragraph 16 of the Complaint, Amerquest denies the allegations. As to the second sentence of paragraph 16 of the Complaint, Amerquest denies that the listed items constitute finance charges within the meaning of Mass. Gen. L. ch. 140D, § 4, *et seq.* and 209 C.M.R. § 32:04, and it further states as to each of the subparagraphs that follow:

- a. Amerquest denies the allegations set forth in paragraph 16(a).
- b. Amerquest denies the allegations set forth in paragraph 16(b).

c. Ameritrust denies the allegations set forth in paragraph 16(c).

d. Ameritrust denies the allegations set forth in paragraph 16(d).

17. Ameritrust denies the allegations set forth in paragraph 17 of the Complaint.

18. Ameritrust admits that it assigned the note and mortgage to Deutsche Bank, as trustee, and is without knowledge or information regarding the remaining allegations set forth in paragraph 18 of the Complaint.

19. Ameritrust admits on information and belief that on or about January 18, 2005, counsel for Deutsche Bank, as trustee, sent a letter to plaintiff concerning plaintiff's delinquent mortgage account and that such letter speaks for itself as to its contents.

20. Ameritrust admits on information and believes that Deutsche Bank, as trustee, initiated foreclosure proceedings on or about January 28, 2005 and is without knowledge or information regarding the remaining allegations set forth in paragraph 20 of the Complaint.

21. Ameritrust admits on information and belief that on or about February 14, 2005, counsel for Deutsche Bank, as trustee, sent correspondence to plaintiff concerning a foreclosure action commenced in connection with plaintiff's mortgage loan, and that the correspondence and any attachments thereto speak for themselves as to their contents and is without knowledge or information regarding the remaining allegations set forth in paragraph 21 of the Complaint.

22. Ameritrust admits that Deutsche Bank, as trustee, received correspondence from plaintiff's attorney in the form attached as Exhibit 5 to plaintiff's Complaint, which correspondence speaks for itself as to its content. Ameritrust denies the remaining allegations set forth in paragraph 22 of the Complaint.

23. The allegations set forth in paragraph 23 of the Complaint consist of legal conclusions to which no responsive pleading is required. To the extent a further response is required, Ameritrust denies the allegations set forth therein.

24. Ameritrust admits that it responded to plaintiff's counsel's correspondence attached as Exhibit 5 to the Complaint and that Ameritrust's response, in the form attached as Exhibit 6 to plaintiff's Complaint, speaks for itself. Ameritrust denies the remaining allegations set forth in paragraph 24 of the Complaint.

25. Ameritrust denies the allegations set forth in paragraph 25 of the Complaint.

26. Ameritrust admits the allegations set forth in paragraph 26 of the Complaint.

Count I
Action for Declaratory Judgment under M.G. L. c. 231A

27. Ameritrust adopts and re-alleges all paragraphs above as if fully restated herein.

28. Ameritrust denies the allegations set forth in paragraph 28 of the Complaint.

29. Ameritrust denies the allegations set forth in paragraph 29 of the Complaint.

30. Ameritrust states that it has responded to Frechette's letter requesting rescission and that it has advised Frechette that he has not effected a valid rescission of his mortgage loan. Ameritrust denies the remaining allegations set forth in paragraph 30 of the Complaint.

31. Ameritrust denies the allegations set forth in paragraph 31 of the Complaint.

32. Ameritrust admits the allegations set forth in paragraph 32 of the Complaint.

Count II
Action for Violations of CCCDA, M.G.L. c. 140D

33. Ameritrust adopts and re-alleges all paragraphs above as if fully restated herein.

34. Ameritrust denies the allegations set forth in paragraph 34 of the Complaint.

35. Ameritrust denies the allegations set forth in paragraph 35 of the Complaint.

36. Ameritrust denies the allegations set forth in paragraph 36 of the Complaint.

Count III
Action for Violations of M.G.L. c. 93A

37. Ameritrust adopts and re-alleges all paragraphs above as if fully restated herein.

38. The allegations set forth in paragraph 38 of the Complaint consist of legal conclusions to which no responsive pleading is required. To the extent a further response is required, Ameritrust denies the allegations set forth therein.

39. The allegations set forth in paragraph 39 of the Complaint consist of legal conclusions to which no responsive pleading is required. To the extent a further response is required, Ameritrust admits that Ameritrust has transacted business within the Commonwealth of Massachusetts. To the extent the allegations set forth in paragraph 39 concern Deutsche Bank, as trustee, Ameritrust is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

40. Ameritrust denies the allegations set forth in paragraph 40 of the Complaint.

41. Ameritrust denies the allegations set forth in paragraph 41 of the Complaint.

Prayers for Relief

Ameritrust denies that plaintiff is entitled to the relief he has demanded.

DEFENSES

First Affirmative Defense

Plaintiff's Complaint fails to state a claim upon which relief can be granted against Ameritrust.

Second Affirmative Defense

Plaintiff's claims are barred by the doctrines of release, waiver, estoppel, acquiescence, and ratification.

Third Affirmative Defense

Any claims by plaintiff under the Massachusetts Consumer Credit Cost Disclosure Act, Mass. Gen. L. ch. 140D, § 1, *et seq.*, are barred to the extent that the alleged violations were not

intentional and resulted from a *bona fide* error notwithstanding the maintenance of procedures to avoid such error.

Fourth Affirmative Defense

Any claims by plaintiff under the Massachusetts Consumer Credit Cost Disclosure Act, Mass. Gen. L. ch. 140D, § 1, *et seq.*, are barred to the extent that any material acts or omissions were made in good faith in conformity with rules, regulations, or interpretations of the Federal Reserve Board.

Fifth Affirmative Defense

The Massachusetts Consumer Credit Cost Disclosure Act, Mass. Gen. L. ch. 140D, § 1, *et seq.*, and the regulations promulgated thereunder, are unconstitutionally vague and indefinite as applied to the conduct alleged in the Complaint.

Sixth Affirmative Defense

Plaintiff's claims are barred by application of the doctrine of failure to mitigate damages.

Seventh Affirmative Defense

In connection with plaintiff's mortgage loan transaction, Ameriquest did not use deception, fraud, false pretense, false promise, misrepresentation, or unfair practices, and did not otherwise conceal or fail to inform plaintiffs of any material facts in violation of Mass. Gen. L. ch. 93A.

Eighth Affirmative Defense

In connection with plaintiff's mortgage loan transaction, Ameriquest never employed conduct that was intentional, willful, wanton, or malicious, and never otherwise showed a complete indifference to or a conscious disregard of plaintiff's rights such that he would be entitled to punitive damages or attorney's fees.

Ninth Affirmative Defense

Any damages were the result of acts or omissions on the part of the plaintiff or a third party for whose conduct Ameriquest is not responsible.

Tenth Affirmative Defense

Plaintiff's claims are barred by the doctrine of unclean hands, laches and equitable subrogation.

Eleventh Affirmative Defense

Ameriquest gives notice that it intends to rely upon such other and further defenses as may become available during discovery proceedings in this case and hereby reserves its right to amend its Answer and assert such defenses.

WHEREFORE, defendant Ameriquest respectfully requests that the Court:

- i. Enter a judgment in its favor on all counts of the Complaint;
- ii. Dismiss the Complaint with prejudice;
- iii. Award Ameriquest its costs and expenses, including attorneys' fees, incurred in this action; and
- iv. Grant such other relief as the Court deems as just and proper.

COUNTERCLAIM

Pursuant to Rule 13(e) of the Federal Rules of Civil Procedure, the defendant/counterclaimant, Ameriquest Mortgage Company, Inc. ("Ameriquest") hereby brings this Counterclaim against plaintiff/defendant-in-counterclaim, Brian L. Frechette ("Frechette" or "plaintiff"), and states:

1. Ameriquest is a Delaware corporation with its principal place of business in California and is qualified to do business in Massachusetts.
2. Upon information and belief, Frechette resides in Sherborn, Massachusetts.

3. On or about October 1, 2003, Frechette obtained a residential mortgage loan from Ameriquest in connection with property located at 74 Washington Street, Sherborn, Middlesex County, Massachusetts.

4. On or about April 21, 2005, Frechette sent Deutsche Bank National Trust Company is trustee of Ameriquest Mortgage Securities, Inc. asset backed pass-through certificates, Series 2003-11 under the Pooling and Servicing Agreement dated as of November 1, 2003, without recourse (“Deutsche Bank, as trustee”), a letter purporting to rescind his mortgage loan transaction pursuant to Mass. Gen. L. ch. 140D. See letter from Frechette’s counsel dated April 21, 2005 attached hereto as Exhibit A.

5. On or about June 3, 2005, Frechette filed suit against Ameriquest and Deutsche Bank, as trustee, alleging that they had failed to adequately disclose certain fees in connection with the subject loan.

6. Ameriquest has provided Frechette with all required disclosures with respect to the subject loan, and Frechette is not entitled to rescind his loan under Mass. Gen. L. ch. 140D.

**COUNT I - DECLARATORY JUDGMENT PURSUANT
TO DECLARATORY JUDGMENT ACT, 28 U.S.C. § 2201**

7. Ameriquest repeats and realleges the allegations set forth in paragraphs 1 through 8 above.

8. By virtue of Frechette’s letter of April 21, 2005, an actual controversy has arisen and exists between Ameriquest and Frechette regarding whether he has a right to rescind the subject loan under Mass. Gen. L. ch. 140D.

9. Frechette alleges that Ameriquest and Deutsche Bank, as trustee, violated Mass. Gen. L. ch. 140D, by failing to adequately disclose certain fees charged in connection with Frechette’s loan, which allegations Ameriquest denies.

10. Ameriquest has provided Frechette with all required disclosures with respect to the subject loan, and Frechette has no basis for rescission of the loan.

11. Ameriquest hereby seeks a declaration of the rights, duties, and liabilities of the parties with respect to Frechette's letter of rescission of his loan, including, without limitation, a declaration that Frechette is not entitled to rescind the subject loan.

RELIEF REQUESTED

WHEREFORE, defendant/counterclaimant Ameriquest respectfully requests that the Court:

A. Enter a declaration that Frechette is not entitled to rescind his mortgage loan with Ameriquest and Deutsche Bank, as trustee, and that alternatively, any such rescission should require a mutual exchange of monies and property by the parties through escrow.

B. Award such additional relief as the Court may deem just and proper.

AMERIQUEST MORTGAGE COMPANY, INC.

By its attorneys,

/s/ Phoebe S. Winder

R. Bruce Allensworth (BBO #015820)
(ballensworth@klng.com)
Phoebe S. Winder (BBO #567103)
(pwinder@klng.com)
Ryan M. Tosi (BBO #661080)
(rtosi@klng.com)
KIRKPATRICK & LOCKHART
NICHOLSON GRAHAM LLP
75 State Street
Boston, MA 02109
(617) 261-3100

DATED: August 2, 2005

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2005, I served a true copy of the foregoing document by electronic filing and first-class mail, postage prepaid, upon the following:

John T. Landry, III
Glynn, Landry, Harrington & Rice, LLP
10 Forbes Road
Braintree, MA 02184-2605

Michael J. Powers
Powers Law Offices, P.C.
91 Gloucester Road
Westwood, MA 02090

/s/ Ryan M. Tosi

Ryan M. Tosi

EXHIBIT A

POWERS LAW OFFICES, P.C.

91 Gloucester Road, Westwood, Massachusetts 02090
781-326-7766 (Tel) 781-326-7788 (Fax) 617-471-2000 (Cell)

MICHAEL J. POWERS, ESQUIRE
bicoastal@comcast.net

April 21, 2005

Original By Certified Mail

(No. 7004 2890 0001 4725 5572)

Return Receipt Requested

**Copy by Facsimile Transmission
(978-256-7615), & USPS Next Day**

Victor Manougian, Esquire
Korde & Associates, P.C.
321 Billerica Road, Suite 210
Chelmsford, MA 01824

RE: Borrower: Brian L. Frechette
Lender: Ameriquist Mortgage Company
Assignee: Deutsche Bank National Trust Company, as Trustee
Loan: \$543,750 Refinance Mortgage Loan dated October 1, 2003
Property: 74 Washington Street, Sherborn, MA 01770
Mortgage: Middlesex South Registry of Deeds, Book 41251, Page 76
Case No.: 305627 (Land Court)

Dear Attorney Manougian:

As you are aware, I, along with Attorney John T. Landry, III, of Glynn, Landry, Harrington & Rice, LLP, represent Brian L. Frechette ("Mr. Frechette") relative to the mortgage foreclosure proceeding commenced by your office on behalf of Deutsche Bank National Trust Company, as Trustee of Ameriquist Mortgage Securities Inc., Asset Backed Pass-Through Certificates, Series 2003-11 under the Pooling and Servicing Agreement dated as of November 1, 2003 ("Deutsche Bank"). Because the refinancing transaction that Mr. Frechette entered into on October 1, 2003, with Ameriquist Mortgage Company ("Ameriquist") involved several violations of the Massachusetts Truth In Lending Act (M.G.L. c.140D, §1 et seq.) ("TILA"), our client has authorized us to rescind the transaction pursuant to M.G.L. c.140D, §10, and the Massachusetts Banking Commissioner's Regulations promulgated thereunder, 209 CMR 32.23.

The following brief synopsis of the facts and law which outlines Mr. Frechette's right to rescind incorporates citations to the federal Truth In Lending Act (15 USC §1601, et. seq.), the Federal Reserve Board Regulations promulgated thereunder (12 CFR §226.1 et. seq., "Regulation Z"); the Official Staff Commentary of the Federal Reserve Board; and relevant federal case law. As the

Victor Manoungian, Esquire

April 21, 2005

Page 2

Massachusetts TILA and regulations are identical to the federal statutory and regulatory scheme in all substantive aspects, the state courts are guided by this federal law in interpreting the cognate provisions of state law. Therefore, although reference is made to federal law throughout this letter for illustrative purposes, the rescission claim and all other claims made herein are solely grounded in state law.

Bases For Exercise of Right of Rescission

The TILA violation which gives rise to Mr. Frechette's right to rescind the Ameriquest mortgage loan transaction includes, but is not limited to, Ameriquest's failure to disclose the correct finance charge. **Mr. Frechette hereby expressly reserve the right to allege additional TILA violations in the event the same are ascertained either in the course of additional investigation or analysis of the circumstances surrounding and the disclosures made in connection with the consummation of the Ameriquest mortgage loan transaction or ascertained through discovery in the event the resolution of this matter involves litigation.**

The TILA violations currently known to Mr. Frechette involve charges that were not bona fide and reasonable and, accordingly, these charges should have been disclosed as components of the finance charge at the time of the consummation of the Ameriquest mortgage loan transaction. By failing to disclose the following charges as components of the finance charge, Ameriquest violated Regulation Z, §226.4(c)(7), and 209 CMR 32.4(c)(7). (All of the following charges are shown on the copy of the HUD-1 Settlement Statement relative to Mr. Frechette's refinance mortgage loan with Ameriquest attached to this correspondence as Exhibit "A").

- A. *\$90.00 Undisclosed Finance Charge Based On Failure To Properly Calculate Title Insurance Premium.* According to line 1108 of the Ameriquest HUD-1 Settlement Statement, Mr. Frechette was charged \$1,450.00 for lender's title insurance coverage in the amount of \$543,750. According to the copy of the Fidelity National Title Insurance Company of New York ("Fidelity") Loan Policy Number 5412-3231241 issued in connection with Mr. Frechette's Ameriquest mortgage loan, the actual premium paid was \$1,360.00 (a copy of Schedule A to said loan policy attached hereto as Exhibit "B"). Accordingly, the \$90.00 overcharge constitutes an undisclosed finance charge.
- B. *\$547.00 Undisclosed Finance Charge Based On Failure To Provide Refinance Loan "Discount" On Title Insurance Premium.* At the time of the issuance of Ameriquest's loan policy of title insurance, Fidelity's published premium rate schedule also provided that in the case of a refinance loan if a policy has been issued insuring the mortgage being refinanced, then the new premium may be 60% of the current premium. To the extent that the new loan amount exceeded the old loan amount, then additional premium at the full rate should be collected for the excess amount. A policy had in fact been issued in connection with the

Victor Manougian, Esquire

April 21, 2005

Page 3

\$456,400 first mortgage loan with New Century Mortgage Corporation being refinanced by Mr. Frechette. Accordingly, Mr. Frechette should have been charged only \$740.00 for the required lender's policy of title insurance, calculated as follows:

\$684.60 Premium on first \$456,400 of coverage x 60% of \$2.50 rate/\$1,000
\$218.40 Premium on remaining \$87,350 at \$2.50 rate/\$1,000
 \$903.00 Premium reflecting appropriate discount

Failure to provide Mr. Frechette with the available discount resulted in a title insurance premium overcharge of \$547.00, which overcharge constitutes an undisclosed finance charge.

- C. *\$65.00 Undisclosed Finance Charge Based on Recording Fees Overcharge.* According to line 1201 of the Ameriquest HUD-1 Settlement Statement, Mr. Frechette was charged recording fees in the amount of \$315.00. However, an examination of the public records of the Middlesex South Registry of Deeds indicates that only \$250.00 in recording fees were paid in connection with the (i) the recording of Ameriquest's mortgage (\$175.00) and (ii) the recording of a discharge (\$75.00). To the extent that the remaining \$65.00 in recording fees collected from Mr. Frechette were in fact not paid to public officials, the same represents an undisclosed finance charge. See *Mayo v. Key Financial Services, Inc.*, 424 Mass. 862 (1997).
- D. *\$25.00 Undisclosed Finance Charge Based on "City/County Tax/Stamps" Fee Overcharge.* According to line 1202 of the Ameriquest HUD-1 Settlement Statement, Mr. Frechette was charged \$25.00 for "City/County Tax/Stamps." There is no record of any tax or stamps being paid in connection with the consummation of Mr. Frechette's mortgage loan transaction with Ameriquest. To the extent that the \$25.00 in tax/stamps collected from Mr. Frechette were in fact not paid to public officials, the same represents an undisclosed finance charge.
- F. *Excessive portion of Attorney Closing Fees Overcharge.* According to lines 1101 and 1111 of the Ameriquest HUD-1 Settlement Statement, the closing attorney handling Mr. Frechette's Ameriquest refinance mortgage loan transaction charged Mr. Frechette a \$300.00 "settlement or closing fee" and a \$750.00 "settlement/disbursement" fee, for a total of \$1,050.00 in "settlement" legal fees. In addition, the \$295.00 charged for an "escrow fee" referenced on line 1112 of the Settlement Statement is merely disguised as a separate cost in order to make the aggregate "settlement" legal fees charged appear lower. The aggregate \$1,345.00 legal fee charged for closing Mr. Frechette's mortgage loan far exceeds the range of charges normally imposed by experienced lender's counsel on loans of this type. As such, the excessive portion is an undisclosed finance charge.

Victor Manougian, Esquire

April 21, 2005

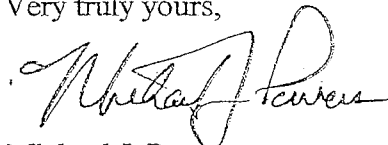
Page 4

In summary, Ameriquest failed to disclose an aggregate of \$727.00 in actual finance charges that were paid by Mr. Frechette and failed to disclose the excessive portion of the legal fees paid by Mr. Frechette to Ameriquest's closing attorney. These failures constitute a violation of Regulation Z, §226.18(d) and 209 CMR 32.18(d) in amounts exceeding TILA's error tolerance for material disclosures (i.e. \$35.00 error tolerance applicable in foreclosure defense context). Further, this failure to make required material disclosures tolls Mr. Frechette's rescission rights until the earlier of Deutsche Bank's provision of rescission right notices with corrected material disclosures, or the passage of four years subsequent to consummation of the transaction. G.L. c.140D, §10, 209 CMR 32.23(a)(3). Cf., 15 USC 1635, Regulation Z, §226.23(a)(3). Deutsche Bank has not provided Mr. Frechette with rescission notices accompanied by the required corrected material disclosures. Further, it has only been approximately one year and eight months since the consummation of the Ameriquest mortgage loan transaction. Accordingly, Mr. Frechette is entitled at this time to rescind the Ameriquest mortgage loan transaction pursuant to the extended rescission rights provided for by TILA.

Demand For Relief

As a result of this rescission notice, Deutsche Bank's security interest is void (209 CMR 32.23(d)(1); Regulation Z, §226.23(d)(1)) and Deutsche Bank is bound to immediately terminate such security interest. 209 CMR 32.23(d)(2); Regulation Z, §226.23(d)(2). In addition, Deutsche Bank has twenty (20) days from its receipt of this notice to return to Mr. Frechette all monies paid in connection with the terms of the Ameriquest mortgage loan. *Id.* Failure to cancel the security interest and return to Mr. Frechette all monies due may subject Deutsche Bank to actual and statutory damages, pursuant to G.L. c.140D, §32, as well as multiple damages for corresponding violations of c.93A. *See*, G.L. c.140D, §34. **Finally, demand is made to immediately suspend all collection proceedings being instituted against Mr. Frechette including but not limited to the foreclosure sale of the subject property scheduled for 2:00 p.m. on Monday, April 25, 2005.**

Very truly yours,



Michael J. Powers

Enclosures

cc: Brian L. Frechette (w/copies of encls. - by first class mail)

Paul Irwin, Esquire (w/copies of encls. - by fax and first class mail)

John T. Landry, III, Esquire (w/copies of encls. - by fax and first class mail)

The Jumps Company, Inc. (w/copies of encls. - by fax and first class mail)

Deutsche Bank National Trust Company, as Trustee (w/copies of encls. - by Certified Mail,

No. 704 2890 000, Return Receipt Requested at: 1761, Andrews Place, Santa Ana, CA 92705)

4725 5589

East Street,

Oct-08-03 12:31pm From:AMERIQUEST MORTGAGE/NATICK

#508-655-7589

T-506 P-004/005 F-004

LINE APPROVAL NO. 2002-0491

WLI STN

Transactions without Sellers

and Urban Development

Name & Address of Borrower:
Brian L. FroehleName & Address of Lender:
Ameriquest Mortgage Company
1 Apple Hill Dr., Box 8118
Natick, MA 01760

74 Washington Street SHERBORN, MA 01770

Property Location: (if different from above)

Settlement Agent:
CROWLEY, ESQ., GEORGE T.

74 Washington Street, SHERBORN, MA 01770

Place of Settlement: 63 SHORE ROAD WINCHESTER, MA 01890

L Settlement Charges

800. Items Payable in Connection with Loan	Loan Number:	Settlement Date:
801. Loan origination fee % to	0059193128 - 5789	10/08/2003
802. Loan discount 2.000 % to Ameriquest Mortgage Company	M. Disbursement to Others	
802. Appraisal/Prop Val to Burke Appraisals *L \$160.00 * \$0.00 \$300.00	1501. HLD BANK (W)	\$299.00
804. Credit report to	1502. DISCOVER FINANCIAL S (W)	\$311.00
805. Inspection fee to	1503. PROVIDENTBNK (W)	\$466,532.08
806.	1504. PROVIDIAN FINANCIAL (W)	\$814.00
807.	1506. SOVEREIGN BANK (W)	\$1,917.00
808. Yield Spread Premium to	1505.	
809.	1507.	
810. Tax Related Service Fee to Ameriquest Mortgage	1508.	
811. Flood Search Fee to Ameriquest Mortgage Company	1509.	
812. Lenders Processing Fee to Ameriquest Mortgage	1510.	
813. Admin to Ameriquest Mortgage Company	1511.	
814. Doc. Prep. Fee to	1512.	
815. Credit Report Fee to	1513.	
816. Origination Fee % to	1514.	
817. Application Fee to Ameriquest Mortgage Company	1515.	
818. Underwriting Fee to	1520. TOTAL DISBURSED (enter on line 1603)	\$489,873.08
819. Service Provider Fee to	Total Wire:	\$527,152.32
820. Processing Fee to	Deposit at Escrow/Title:	\$0.00
821. Underwriting Fee to	Subordinate Financing:	\$0.00
822. Appraisal Fee to	L = Lender Paid	
900. Items Required by Lender to be Paid in Advance	N NET SETTLEMENT	
901. Interest from 10/08/2003 to 11/01/2003 @ \$171.32 per day	1600. Loan Amount	\$43,750.00
902. Mortgage insurance premium for months to	1601. Plus Cash/Check from Borrower	
903. Hazard Ins prem to	1602. Minus Total Settlement Charges (line 1400)	\$19,812.68
904. Flood Ins prem to	1603. Minus Total Disbursements to Others (line 1520)	\$489,873.08
1000. Reserve Deposited with Lender	1604. Equals Disbursements to Borrower (after expiration of any applicable rescission period)	\$54,064.24
1001. Hazard insurance months @ \$ per month		
1002. Mortgage insurance months @ \$ per month		
1003. Earthquake Ins months @ \$ per month		
1004. County prop. taxes months @ \$ per month		
1005. Annual assess. months @ \$ per month		
1006. Flood months @ \$ per month		
1007. Windstorm Ins months @ \$ per month		
1008.		
1100. Title Charges		
1101. Settlement or closing fee to The Law Offices of		
1102. Abstract or title search to		
1103. Title examination to		
1104. Title insurance binder to		
1105. Document preparation to		
1106. Notary fees to		
1107. Attorney's fees to		
1108. Title insurance to The Law Offices of George Crowley		
1108. Lender's coverage \$		
1110. Owner's coverage \$		
1111. Settlement/Disbursement fee to The Law Offices of		
1112. Escrow Fee to The Law Offices of George Crowley		
1200. Government Recording and Transfer Charges		
1201. Recording fees		
1202. City/county instamps		
1203. State tax/stamps		
1204. State specific fee		
1205. State specific fee		
1300. Additional Settlement Charges		
1301. Demand to		
1302. Post inspection to		
1303. Survey Fee		
1304. Staff Appraiser Fee		
1305. Reconveyance Fee to		
1306.		
1307. Property Val Fee to		
1308. Courier Fee		
1400. Total Settlement Charges (enter on line 1602)		\$19,812.68

Borrower(s) Signature(s):

X

Approved for Funding By: Chris Jenkins

Approved:

Branch: Natick, MA 01760

Mortgage Lenders License - License Number ML0702

SCHEDULE A
LOAN FORM

OFFICE FILE NO. 2006182

OWNERS	POLICY NUMBER	DATE OF POLICY @	AMOUNT OF INSURANCE	PREMIUM
LOAN	POLICY NUMBER 5412-3231241	DATE OF POLICY 10/9/2003 @ 2:16 PM	AMOUNT OF INSURANCE \$543,750.00	PREMIUM \$1,360.00

1. Name of Insured:

Amerquest Mortgage Company, its successor and/or assigns, ATIMA

2. The estate or interest referred to herein is at Date of Policy vested in:

Brian L. Frechette

3. The estate or interest in land described in this Schedule and which is encumbered by the insured mortgage is :

Fee Simple.

4. The Mortgage, herein referred to as the insured mortgage, and the assignments thereof, if any, are described as follows:

Mortgage from Brian L. Frechette to Amerquest Mortgage Company, dated 9/23/2003, securing the original principal amount of \$543,750.00 and recorded with the Middlesex County Registry of Deeds on 10/9/2003 at 2:16 PM as Instrument No. 1279.

5. The land referred to in this policy is located at 74 Washington Street, in the City/Town of Sherborn, County of Middlesex, State of Massachusetts, and is described as set forth in Exhibit A attached hereto and made a part hereof.

Countersigned

By: George T. Crowley / dmh
Authorized Signatory
George T. Crowley